



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

WEST HOUSTON MEDICAL CENTER  
C/O HOLLOWAY & GUMBERT  
3701 KIRBY DRIVE STE 1288  
HOUSTON TX 77098-3926

**Carrier's Austin Representative Box**  
#01

#### **MFDR Date Received**

NOVEMBER 28, 2007

#### **Respondent Name**

LIBERTYMUTUAL INSURANCE CORP

#### **MFDR Tracking Number**

M4-08-2140-01

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary Dated November 27, 2007:** "West Houston Medical Center billed its usual and customary charges for its services. The total sum billed was \$76,678.46...The claim presented by West Houston Medical Center was billed in the same manner and at the same rates that it would bill any health plan or insurer... Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%...the fees paid by Liberty Mutual Insurance Company do not conform to the reimbursement section of rule 134.401...it is the position of West Houston Medical Center that all charges relating to the admission of [Claimant] are due and payable as provided for under Texas law and the Rules of the Division, as currently adopted and published at 28 TAC §134.400 *et seq.*"

**Requestor's Supplemental Position Summary Dated December 10, 2007:** "Pursuant to TDI Rule 133.307(g)(3), please find enclosed copy of the Explanation of Benefits reflecting the payment of \$5,354.32, which was received after the filing of our client's request for MDR, as well as an amended form DWC060."

**Amount in Dispute:** \$41,288.58

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary Dated December 17, 2007:** "We have reviewed the bill and documentation attached to the medical dispute and our position is unchanged for the following reasons: a) The provider has a contractual rate agreement with the First Health Network...b) The provider did not seek authorization for additional treatment as required by the Texas Workers Compensation act §413.04 and §408.0042...West Houston Medical Center's contractual agreement with the First Health Network does not allow for reimbursement at the stop loss rate due to the bill not meeting the outlier threshold set-forth in the providers' contract...Since the implant portion of this bill is reimbursed under a separate rate category, this bill does not qualify for outlier reimbursement. West Houston Medical Center's contractual agreement with first Health allows for a standard case rate of \$13,141.00 per case for the first 6 days; however, the provider failed to obtain authorization for additional days as mandated by the Texas Workers Compensation act §413.04 and §408.0042, therefore the per diem amount per this provider's agreement with First Health was applied...Liberty Mutual does not believe that West Houston Medical Center is due any further reimbursement."

**Response Submitted by:** Liberty Mutual Insurance Company

**Respondent's Supplemental Position Summary Dated November 30, 2011:** "Based on the performed procedure, as well as the length of stay, the Requestor has invoked the Stop-Loss Exception contained within the former Acute Care Inpatient Hospital Fee Guidelines and sought reimbursement for facility fees for dates-of-

service November 29, 2005 through December 6, 2006. The Requestor now seeks reimbursement in the amount of \$46,642.90. Requestor has failed to meet the Austin Third Court of Appeals' mandate that, to qualify for reimbursement under the Stop-Loss Exception (former 28 Tex. Admin. Code §134.401(c)(6)) a hospital must demonstrate two things: the services it provided during the admission were unusually costly and unusually extensive, and its total audited charges exceeded \$40,000...Because Requestor has not met its burden of demonstrating unusually extensive services, and the documentation adduced thus far fails to provide any rationale for the Requestor's qualification for payment under the Stop-Loss Exception, Respondent appropriately issued payment per the standard Texas Surgical per diem rate. No additional monies are due to the Requestor."

**Respondent's Supplemental Position Summary Dated February 9, 2012:** "On November 30, 2011 First Liberty Insurance Corporation timely submitted a supplemental position statement regarding the medical dispute made the basis of this matter. Please allow this correspondence to serve as an addendum to that statement. As outlined in the EOBs, Requestor's services exceeded those properly preauthorized per 28 Tex. Lab. Code §134.600. Respondent preauthorized a two day hospitalization; Requestor billed nine days. Respondent requests the Division decline to review any charges incurred after November 30, 2006 because the Requestor failed to obtain the requisite preauthorization. The Respondent's review of the records provides no indication that unusually extensive services were administered over the course of this admission...As with the unusually extensive prong, the Hospital bears the burden of proof to demonstrate that the services it provided are unusually costly...The Requestor in this matter offers neither explanation nor discussion as to how the services it provided may be considered unusually costly...Because Requestor has not met its burden of demonstrating unusually extensive services, and the documentation adduced thus far fails to provide any rationale for the Requestor's qualification for payment under the Stop-Loss Exception, Respondent appropriately issued payment per the standard Texas Surgical per diem rate. No additional monies are due to the Requestor."

**Responses Submitted by:** Hanna & Plaut LLP

### **SUMMARY OF FINDINGS**

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
November 29, 2006 through December 6, 2006	Inpatient Hospital Services	\$41,288.58	\$381.05

### **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

- 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
- 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
  - Effective July 13, 2008, the Division's rule at former 28 Texas Administrative Code § 134.401 was repealed. The repeal adoption preamble specified, in pertinent part: "Section 134.401 will continue to apply to reimbursements related to admissions prior to March 1, 2008." 33 *Texas Register* 5319, 5220 (July 4, 2008).
  - Former 28 Texas Administrative Code § 134.401(a)(1) specified, in pertinent part: "This guidelines shall become effective August 1, 1997. The Acute Care Inpatient Hospital Fee Guideline (ACIHFG) is applicable for all reasonable and medically necessary medical and/or surgical inpatient services rendered after the Effective Date of this rule in an acute care hospital to injured workers under the Texas Workers' Compensation Act." 22 *Texas Register* 6264, 6306 (July 4, 1997).
- 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.
- 28 Texas Administrative Code §134.600, 31 *Texas Register* 3566, effective May 2, 2006, requires preauthorization for inpatient hospital services.

The services in dispute were reduced/denied by the respondent with the following reason codes:

#### Explanation of Benefits

- P303 – This service was reviewed in accordance with your contract.
- 45 – Charges exceed your contracted/legislated fee arrangement
- PA – FIRST HEALTH
- W10– No maximum allowable defined by fee guideline. Reimbursement made based on insurance carrier fair and reasonable reimbursement methodology.
- Z585 – The charges for this procedure exceeds fair and reasonable.
- 62 – Payment denied/reduced for absence of, or exceeded, pre-certification/authorization
- X170 – Pre-authorization was required, but not requested for this service per TWCC rule 134.600.
- Z612 – This bill was reviewed in accordance with your contract with FIRST HEALTH.
- W1 – Workers Compensation state fee schedule adjustment.
- Z711 – The charge for this procedure exceeds the customary charges by other providers for this service.
- Z695 – The charges for this hospitalization have been reduced based on the fee schedule allowance.
- Z710 – The charge for this procedure exceeds the fee schedule allowance.
- 42 – Charges exceed our fee schedule or maximum allowable amount.
- 24 – Payment for charges adjusted. Charges are covered under a capitation agreement/managed care plan.

#### Issues

1. Does the submitted documentation support a preauthorization issue exists in this dispute?
2. Did the audited charges exceed \$40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. Is the requestor entitled to additional reimbursement?

#### Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.600(q)(1) requires "The health care requiring concurrent review for an extension for previously approved services includes: (1) inpatient length of stay."

The respondent states in the position summary that "Respondent preauthorized a two day hospitalization; Requestor billed nine days. Respondent requests the Division decline to review any charges incurred after November 30, 2006 because the Requestor failed to obtain the requisite preauthorization."

The requestor did not submit any documentation to support that preauthorization was obtained for the additional five inpatient hospital days in accordance with 28 Texas Administrative Code §134.600(q)(1). Therefore, a preauthorization issue does exist in this dispute.

2. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states “to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “Audited charges are those charges which remain after a bill review by the insurance carrier has been performed.” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$76,678.46. The division concludes that the total audited charges exceed \$40,000.
3. The requestor in its position statement presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services.” The requestor failed to demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 Texas Administrative Code §134.401(c)(6).
4. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The requestor failed to demonstrate that the particulars of the admission in dispute constitutes unusually costly services; therefore, the division finds that the requestor failed to meet 28 Texas Administrative Code §134.401(c)(6).
5. 28 Texas Administrative Code §134.401(b)(2)(A) titled General Information states, in pertinent part, that “The basic reimbursement for acute care hospital inpatient services rendered shall be the lesser of:
  - (i) a rate for workers’ compensation cases pre-negotiated between the carrier and the hospital;
  - (ii) the hospital’s usual and customary charges; and
  - (iii) reimbursement as set out in section (c) of this section for that admission

In regards to a pre-negotiated rate, the services in dispute were reduced in part with the explanation “This bill was reviewed in accordance with your contract with FIRST HEALTH.” No documentation was provided to support that a reimbursement rate was negotiated between the workers’ compensation insurance carrier Liberty Mutual Insurance Corp. and West Houston Medical Center prior to the services being rendered; therefore 28 Texas Administrative Code §134.401(b)(2)(A)(i) does not apply.

In regards to the hospital’s usual and customary charges in this case, review of the medical bill finds that the health care provider’s usual and customary charges equal \$76,678.46.

In regards to reimbursement set out in (c), the division determined that the requestor failed to support that the services in dispute are eligible for the stop-loss method of reimbursement; therefore 28 Texas Administrative Code §134.401(c)(1), titled Standard Per Diem Amount, and §134.401(c)(4), titled Additional Reimbursements, apply. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

- Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission.” The length of stay was seven days; however, documentation supports that the Carrier pre-authorized a length of stay of two days in accordance with 28 Texas Administrative Code Rule §134.600. Consequently, the per diem rate allowed is \$2,236.00 for the two authorized days.
- 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).” Review of the requestor’s medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

Code	Itemized Statement Description	UNITS	Cost Per Unit	Cost + 10%
0278	Spinal Fixation WH/AP	1	\$7,831.30	\$8,614.43
TOTAL ALLOWABLE			\$8,614.43	

The total reimbursement set out in the applicable portions of (c) results in \$2,236.00 + \$8,614.43, for a total of \$10,850.43.

Reimbursement for the services in dispute is therefore determined by the lesser of:

§134.401(b)(2)(A)	Finding
(i)	Not Applicable
(ii)	\$76,678.46
(iii)	\$10,850.43

The division concludes that application of the standard per diem amount and the additional reimbursements under §134.401(c)(4) represents the lesser of the three considerations. The respondent issued payment in the amount of \$10,469.38. Based upon the documentation submitted, additional reimbursement can be recommended.

### **Conclusion**

For the reasons stated above, the division concludes that the services in dispute are not eligible for the stop-loss method of reimbursement, that a pre-negotiated rate does not apply, and that application of 28 Texas Administrative Code §134.401(c)(1), titled *Standard Per Diem Amount*, and §134.401(c)(4), titled *Additional Reimbursements*, results in the total allowable reimbursement. Based upon the documentation submitted, the requestor's Table of Disputed Services, and reimbursement made by the respondent, the amount ordered is \$381.05.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$381.05 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

04/25/2013`  
\_\_\_\_\_  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**